

Item # 14

Prepared by Robert B. Rolwing

Commissioner MULROY

Approved by \_\_\_\_\_

ORDINANCE NO 344

**AN ORDINANCE REPEALING ORDINANCE NO. 81 RELATIVE TO  
REGULATING AND LICENSING SEXUALLY ORIENTED BUSINESSES,  
AND ADOPTING THE STATE ADULT-ORIENTED ESTABLISHMENT  
REGISTRATION ACT OF 1998 IN SHELBY COUNTY**

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**WHEREAS**, Tennessee Code Annotated, Sections 7-51-1101, et seq , the Adult -Oriented Establishment Registration Act of 1998, provides a method of regulating sexually-oriented businesses to address their deleterious secondary effects without regard to the content of speech, and

**WHEREAS**, The validity and constitutionality of that law has been affirmed by the Tennessee Court of Appeals in *American Show Bar Series, Inc v Sullivan County*, 30 S W 3d 324 (2000), *permission to appeal to the Supreme Court denied*, and by the United States District Court for the Western District of Tennessee, and on appeal by the Sixth United States Circuit Court of Appeals in *Odle v Decatur County*, 421 F 3d 386 (6<sup>th</sup> Cir 2005), and similar provisions have been approved in numerous other court opinions throughout the nation, and

**WHEREAS**, That law corrects the deficiency of Ordinance No 81 (November 5, 1990), as ruled in *Cooper d/b/a Night Moves, Inc v A C Gilless, et al* , Circuit Court No 64967-2 (1996), and detailed further as to the companion Memphis City Ordinance No 4013 in *East Brooks Books, Inc v City of Memphis*, 48 F 3d 220 (6<sup>th</sup> Cir 1995), *rehearing denied, certiorari denied* 516 U S 909, 116 S Ct 277, 133 L Ed 2d 198 (1995)(No 95-203), and is in accordance with the law as it has subsequently developed, as particularly detailed in *City of Littleton v Z J Gifts D-4, L L C* , 541 U S 774, 124 S Ct 2219, 159 L Ed 2d 84 (2004), and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a report concerning the Location and Land Use of Identified Sexually Oriented Businesses in Memphis, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a report of the *Geospatial Analysis of Crime Incidents and Arrests Around*

*Sexually Oriented Businesses* – May 2004 by the University of Memphis Center for Community Criminology and Research, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a report entitled *Best Practice Number 15 Examining the Impact of Sexually Oriented Businesses on Crime in Memphis, Tennessee*, a report of the Memphis Shelby Crime Commission, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a report entitled *Regulating Adult Oriented Establishments*, December 11, 2006, Report of Duncan Associates for the Memphis Shelby Crime Commission, Office of Planning and Development, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a report entitled *Addendum to Best Practice 15*, dated sometime in 2007, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a letter summary of illegal activity dated March 12, 2007, from the Honorable William L. Gibbons, District Attorney General, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review the *Memphis Alcohol Commission and Adult Entertainment Report* of April 2007 by the Memphis and Shelby County Division of Planning and Development, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review other reports documenting the negative secondary effects of adult businesses, including a report summarizing the citations issued and disposed of from January 2000 - April 2007 for violations of Memphis City Code, Section 4-82, Prohibited Sexual or Pornographic Conduct, prepared May 7, 2007, by Wanda Corcoran, Chief Deputy of the Memphis City Court Clerk's Office, virtually all of which citations were issued in Memphis adult cabarets, and

**WHEREAS**, This Board of County Commissioners has had the opportunity to review a report regarding the adverse health effects of activity commonly occurring in adult bookstores, and

**WHEREAS**, This Board of County Commissioners adopts the findings of those reports and likewise follows and adopts the state legislature's findings in enacting the law, at 1998 *Tennessee Public Acts*, chapter 1090 and amendments, and in particular in

the most recent amendments to that law at 2006 *Tennessee Public Acts*, chapter 943, wherein the legislature found the law to be a reasonable time, place, and manner regulation to attempt to address some recognized deleterious secondary effects commonly associated with adult-oriented establishments, including but not limited to an increase in crime, the spread of sexually-transmitted diseases, the downgrading of property values, and other public health, safety, and welfare issues, and

**WHEREAS**, This Board of County Commissioners finds that each of the foregoing negative secondary effects constitutes a harm that the County has a substantial government interest in preventing and/or abating. This substantial government interest in preventing adverse secondary effects, which is the rationale for regulating adult-oriented businesses, exists independent of any comparative analysis between adult-oriented and non-adult-oriented businesses. Additionally, the interest in regulating adult-oriented businesses extends to preventing future secondary effects of adult-oriented businesses currently operating in Shelby County as well as future adult-oriented businesses that may locate in Shelby County. The Board of County Commissioners finds that the cases and documentation referenced herein are reasonably believed to be relevant to such secondary effects.

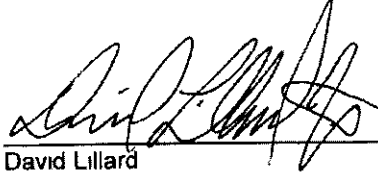
**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE**, That Shelby County Ordinance No. 81, entitled an Ordinance of the County of Shelby Regulating and Licensing Sexually Oriented Businesses, encoded at Shelby County Code, Sections 7-346, et seq., is hereby repealed.

**BE IT FURTHER ORDAINED**, That the Adult-Oriented Establishment Registration Act of 1998, encoded at Tennessee Code Annotated, Sections 7-51-1101, et seq., and as it may be amended from time to time by the state legislature, is effective in Shelby County according to the terms of this ordinance.

**BE IT FURTHER ORDAINED**, That pursuant to Tennessee Code Annotated, § 7-51-1112, the various municipal police departments are authorized to enforce this law within their jurisdictions to the same extent as the Shelby County Sheriff.

**BE IT FURTHER ORDAINED**, That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

BE IT FURTHER ORDAINED, That this Ordinance shall become effective  
January 1, 2008



David Lillard  
Chairman of County Commission

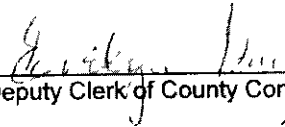


A C Wharton, Jr  
County Mayor

Date

9/13/07

ATTEST



Deputy Clerk of County Commission

FIRST READING      JULY 9, 2007  
SECOND READING    JULY 23, 2007  
ADOPTED  
THIRD READING     SEPTEMBER 10, 2007

